

AMENDED IN SENATE JULY 9, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## ASSEMBLY BILL

**No. 1553**

**Introduced by Assembly Members Wesson and Bermudez**

February 21, 2003

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An act to amend Sections 9855 and 9855.2 of the Business and Professions Code, relating to service contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1553, as amended, Wesson. Service contracts.

Existing law, until January 1, 2008, regulates service contracts, as defined, relating to the maintenance or repair of specified sets and appliances. *Under existing law, a service contract may include provisions for incidental payment of indemnity, under limited circumstances.*

This bill would change the definition of service contract by expanding the items that a contract may cover to also include furniture, jewelry, ~~and~~ specified equipment, appliances, and products. *The bill would limit the value of incidental payment of indemnity to a retail value of \$250 per year.*

Existing law, effective until January 1, 2008, prohibits a service contract seller from issuing a service contract without complying with specified requirements.

This bill would allow a service contract seller to satisfy one of these requirements by filing with the Director of Consumer Affairs the most

recent audited financial statement reflecting a net worth of not less than \$100,000,000.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9855 of the Business and Professions  
2 Code is amended to read:

3 9855. The definitions used in this section shall govern the  
4 construction and terms as used in this chapter:

5 (a) (1) “Service contract” means a contract in writing to  
6 perform, over a fixed period of time or for a specified duration,  
7 services relating to the maintenance, replacement, or repair of a set  
8 or appliance, as defined by this chapter, or of furniture, jewelry,  
9 lawn and garden equipment, power tools, fitness equipment,  
10 telephone equipment, small kitchen appliances and tools, or home  
11 health care products, and may include provisions for incidental  
12 payment of indemnity under limited circumstances, including, but  
13 not limited to, power surges, food spoilage, or accidental damage  
14 from handling.

15 (2) *Incidental payment of indemnity under paragraph (1) shall*  
16 *not exceed a retail value of two hundred fifty dollars (\$250) per*  
17 *year.*

18 (b) “Service contract administrator” or “administrator”  
19 means a person, other than a service contract seller or an insurer  
20 admitted to do business in this state, who performs or arranges, or  
21 has an affiliate who performs or arranges, the collection,  
22 maintenance, or disbursement of moneys to compensate any party  
23 for claims or repairs pursuant to a service contract, and who also  
24 performs or arranges, or has an affiliate who performs or arranges,  
25 any of the following activities on behalf of service contract sellers:

26 (1) Providing service contract sellers with service contract  
27 forms.

28 (2) Participating in the adjustment of claims arising from  
29 service contracts.

30 (3) Arranging on behalf of service contract sellers the  
31 insurance required by Section 9855.2.

32 A service contract administrator shall not be an obligor on a  
33 service contract.



(c) “Service contract seller” or “seller” means a person who sells or offers to sell a service contract to a service contractholder, including a person who is the obligor under a service contract sold by the seller, manufacturer, or repairer of the product covered by the service contract.

(d) “Service contractholder” means a person who purchases or receives a service contract from a service contract seller.

(e) “Service contractor” means a service contract administrator or a service contract seller.

(f) “Service contract reimbursement insurance policy” means a policy of insurance issued by an insurer admitted to do business in this state providing coverage for all obligations and liabilities incurred by a service contract seller under the terms of the service contracts sold in this state by the service contract seller to a service contractholder. The service contract reimbursement insurance policy shall either cover all service contracts sold or specifically cover those contracts sold to residents of the State of California.

(g) “Obligor” is the entity financially and legally obligated under the terms of a service contract.

(h) The terms “consumer goods,” “manufacturer,” “retail seller,” “retailer,” and “sale” shall have the same meanings ascribed to them in Section 1791 of the Civil Code.

SEC. 2. Section 9855.2 of the Business and Professions Code is amended to read:

9855.2. (a) A service contract seller shall not issue, sell, or offer for sale a service contract unless he or she complies with one of the following requirements:

(1) Files with the director one of the following:

(A) The most recent annual report on Form 10-K required by the Securities and Exchange Commission, reflecting a net worth greater than the sum of the deferred revenues from service contracts in force. If the service contractor is a foreign corporation that files a comparable audited financial statement with its home government or with the United States government, the director may deem that statement an acceptable substitute for Form 10-K.

(B) The most recent audited financial statement reflecting a net worth of not less than one hundred million dollars (\$100,000,000). *The financial statement shall be certified by a certified public accountant who is licensed in the state where the service contract*

1 *seller maintains its principal place of business or the seller's state*  
2 *of domestic incorporation.*

3 (2) Obtains a service contract reimbursement insurance policy.

4 (3) Sells service contracts that are administered by a service  
5 contract administrator who has obtained a service contract  
6 reimbursement insurance policy covering the seller's service  
7 contracts.

8 (4) Maintains and annually verifies to the director a funded  
9 account held in escrow equal to a minimum of 25 percent of the  
10 deferred revenues from the service contracts in force.

11 (b) A service contract administrator shall not administer  
12 service contracts sold in this state unless a service contract  
13 reimbursement insurance policy covering these service contracts  
14 has been obtained.

